

Exhibit 2:

Stipulation of Dismissal in *Kathrens v. Jewell*, No. 2:16-cv-01650-SI, ECF No. 16

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PENDLETON DIVISION

GINGER KATHRENS, *et al.*,

Plaintiffs,
v.

Case No. 2:16-cv-01650-SI

STIPULATED VOLUNTARY
DISMISSAL

S.M.R. JEWELL, *et al.*,

Defendants.

The following stipulation (“Stipulation”) is entered into by and between Plaintiffs Ginger Kathrens, The Cloud Foundation, American Wild Horse Preservation Campaign, and Deniz Bolbol; and Federal Defendants S.M.R. Jewell, in her official capacity as Secretary of the United States Department of the Interior, Neil Kornze, in his official capacity as Director of the Bureau of Land Management (“BLM”), Jeff Rose, in his official capacity as District Manager of the Burns District Office, and Ron Dunton, in his official capacity as Acting State Director of Oregon:

WHEREAS, Plaintiffs filed their Complaint in this action on August 15, 2016, alleging that Federal Defendants violated the First Amendment of the United States Constitution, the Wild Free-Roaming Horses and Burros Act, and the Administrative Procedure Act by denying Plaintiffs’ request to observe upcoming wild mare sterilization research authorized by a June 24, 2016 Decision Record. *See* Compl. ¶¶ 63-68, ECF No. 1.

WHEREAS, on September 9, 2016, BLM determined that it would voluntarily vacate the June 24, 2016 Decision Record.

WHEREAS, on September 9, 2016, Federal Defendants filed a Motion to Vacate and Remand the Decision Record with the Interior Board of Land Appeals (“IBLA”). *See* Attachment 1.¹

WHEREAS, on September 9, 2016, the IBLA issued an order vacating Federal Defendants’ Decision Record. *See* Attachment 2.

WHEREAS, by operation of BLM vacating its June 24, 2016 Decision Record, the underlying agency actions at issue in this case no longer have legal authorization and therefore BLM must, before seeking to take similar actions in the future, undertake a new decisionmaking process.

NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the undersigned parties hereby stipulate to the voluntary dismissal of all claims in Plaintiff’s Complaint. This dismissal shall be with prejudice.
2. Plaintiffs reserve their right to file a motion with the Court seeking attorneys’ fees and costs. Federal Defendants reserve their right to oppose that motion.
3. This Stipulation does not represent an admission by any party to any fact, claim, or defense at issue in this lawsuit. This Stipulation has no precedential value.

¹ On July 29, 2016, four entities challenged BLM’s Decision Record by filing an appeal to the IBLA. Once a Decision Record has been appealed to the IBLA, BLM loses jurisdiction over the Decision Record. *See, e.g., American Petroleum Energy Co.*, 160 IBLA 59, 72 (2003) (“if a timely notice of appeal is properly filed, the office issuing the decision loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over it is restored by Board action disposing of the appeal”) (and cases cited therein). Therefore, in order to vacate its Decision Record, Federal Defendants filed a motion to vacate with the IBLA.

4. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the terms and conditions of this Stipulation and do hereby agree to the terms herein.

Respectfully submitted this 9th day of September, 2016,

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